IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 884 of 2007
To
FIRST APPEAL No. 886 of 2007
With
CIVIL APPLICATION No. 2550 of 2007
To
CIVIL APPLICATION No. 2552 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

UNITED INDIA INSURANCE CO. LTD - Appellant(s)
Versus
BECHARBHAI KAMAJIBHAI KHARADI & 3 - Defendant(s)

==========

Appearance :
MS HINA DESAI for Appellant(s) : 1,
None for Defendant(s) : 1 - 4.

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

These three First Appeals arise out of a common judgement and three separate awards dated 4th March, 2006 passed by the Motor Accident Claims Tribunal(Aux.), Sabarkantha, Himmatnagar in MACP Nos. 1860/2000, 1100/2000, 1101/2000.

2. On 14th March, 2000, several persons were travelling on a vehicle bearing registration no. GJ-3E-9554, carrying machinery for digging of tube-wells. The travellers were travelling as labourers in the said vehicle. When the vehicle was passing by Bhanpur near Kanpur at about 4.30 p.m., due to rash and negligent driving of the vehicle by the driver, the vehicle toppled and over turned causing injuries to the labourers.

2.1 On account of the injuries received, two of the travellers died. For death of Kantibhai Kharadi aged 20 years, his parents aged 45 and 40 years respectively filed MACP No.1860/2000(related to the First Appeal No.884/2007), claiming compensation of Rs.3,00,000/- .

2.2 For bodily injuries received by one Ramanbhai Becharbhai Ozat, he filed MACP

No.1100/2000 (related to the First Appeal No.885/2007) seeking compensation of Rs.5,00,000/- .

2.3 For death of Kalpeshbhai Jivabhai Ozat aged 30 years, his widow, two children and aged parents filed MACP No. 1101/2000 (related to the First Appeal No.886/2007) seeking compensation of Rs. 4,00,000/-.

2.4 The Tribunal in its impugned judgement had no hesitation in concluding that the accident occurred on account of sole negligence of the driver of the vehicle involved in the accident in which the deceased/injured persons were travelling.

2.5 With respect to the compensation, the Tribunal awarded a sum of Rs.2,95,000/- to the claimants in MACP No.1860/2000 (related to the First Appeal No.884/2007) for death of 20 year old son, Rs.95,200/- to the claimant in MACP No.1100/2000 (related to the First Appeal No.885/2007) for the bodily injuries received by him and Rs.3,70,000/- to the widow, two minor children and aged parents for death of 30 year old person in MACP No.1101/2000 (related to the First Appeal No.886/2007).

2.6 The Tribunal directed that the compensation shall carry interest at the rate of

9% per annum from the date of claim petition till December, 2000 and thereafter, at the rate of 6% per annum.

3. Before us, the appellant insurance company sought to challenge these awards passed by the Claims Tribunal as being excessive. It may be noted that the appellant insurance company has neither disputed the conclusions of the Tribunal regarding negligence of the driver of the vehicle in causing the accident nor has raised any other dispute about the payability of the compensation itself.

4. In fact, the challenge in appeal is confined to only part of the compensation awarded by the Claims Tribunal.

5. In the result, we have heard learned advocate Ms. Hina Desai for the appellant insurance company on the question of quantum of compensation awarded by the Tribunal.

6. In MACP No.1860/2000 (related to the First Appeal No.884/2007) as noted earlier, the Tribunal granted compensation of Rs. 2,95,000/. The monthly income of the deceased was believed at Rs.1500/- per month. Considering the future prospective rise in the income, the Tribunal assessed monthly prospective income of the deceased at Rs. 2250/- and set apart an amount

of Rs. 1500/- per month for the claimants. The Tribunal adopted multiplier of 15 considering the age of the claimants being 45 and 40 years respectively, assessed loss of dependency benefits at Rs. 2,70,000/-. To this, the Tribunal added conventional amount of Rs.20,000/- towards loss of estate and Rs.5,000/- towards funeral charges. We see no reason to interfere.

6.1 The overall assessment of the compensation is certainly not excessive. Compensation awarded is well within the brackets. Even though learned advocate Ms. Desai for the appellant is correct in pointing out that the Tribunal deducted only 1/3rd of the prospective income of the deceased for his personal expenditure, when the claimants were parents of the deceased, we find that the overall compensation awarded by the Tribunal is not excessive. The Tribunal certainly erred on the lower side in believing monthly income of the deceased at Rs.1500/-. The deceased was young abled bodied person aged 20 years. He was shown to have been working as a labourer in Tube-well construction operation. He therefore, had some special skill. Even considering the minimum wage rates prescribed by the State Government, his monthly income could easily have been assessed at Rs. 2500/- on the date of death. Thus, taking into account the assessment

of monthly income of the deceased made by the Tribunal on the lower side even if the arguments of learned advocate for the appellant were to be accepted, in final analysis, the compensation awarded by the Tribunal, would not be significantly different. In that view of the matter, the appeal is devoid of merits and is required to be dismissed.

7. In MACP No.1100/2000 (related to the First Appeal No.885/2007), against the claim of Rs.5,00,00/- the Tribunal granted compensation of Rs. 95,200/ to the injured claimant. The Tribunal believed monthly income at Rs. 1500/-. On the basis of medical evidence as well as upon consent, permanent disability was assessed at 20% of the body as a whole. The Tribunal adopted multiplier of 17 years since injured was aged 20 years. Considering 20% disability and monthly income of Rs.1500/-, Tribunal calculated loss of future earning capacity at Rs.300/- per month or Rs. 3600/- per annum and awarded a sum of Rs.61,200/- (Rs.3600x17)towards loss of future income.

7.1 Considering that the claimant had suffered fracture on the left leg, Tribunal awarded a sum of Rs.15,000/- for pain, shock and suffering and Rs.10,000/- towards medical expenses. To this Tribunal added Rs.3,000/- for special diet and transportation charges and Rs.6,000/- for actual

loss of income. Thus a total compensation of Rs.95,200/- was arrived at.

7.2 We see no reason to interfere. The assessment of income at Rs. 1500/- per month was certainly on the conservative side. 20% disability was accepted by consent. For claimant aged 20 years, multiplier of 17 was also quite justified. Thus overall award being just and reasonable, this appeal is also devoid of merits and deserves to be dismissed.

8. In MACP No.1101/2000 (related to the First Appeal No.886/2007), the claimants had filed claim petition seeking compensation of Rs.4,00,000/-. The claimants included widow of the deceased, his two minor children and aged parents. The Tribunal believed monthly income of the deceased Rs.1500/- and prospective income at Rs.2250/-, calculated loss of dependency for the family at Rs.1800/- per month or Rs.21600/-. The Tribunal adopted multiplier of 16 and granted Rs.3,45,600/- for loss of dependency benefits, Rs.20,000 was added towards loss of estate and Rs.5000/- for funeral expenses. Total compensation of Rs.3,70,600/- was thus awarded.

8.1 We see absolutely no reason to interfere. For a young abled bodied person aged 30 years who was employed in labour work of bore-well construction, assessment of monthly income of

Rs.3500/- calls for no reduction. Prospective income of Rs.2250/- thus arrived at by the Tribunal is certainly not on the higher side. Considering the number of dependents, setting aside Rs.1800/- per month from the said amount by way of dependency benefits is also quite reasonable. Even if there was some scope of modification here, we find that multiplier of 16 for deceased aged 30 years and for claimants which included young widow of the deceased, two minor children and two aged parents could easily have been increased. In that view of the matter, overall compensation granted by the tribunal is quite reasonable. This appeal therefore, also must be dismissed.

9. All the three appeals of the appellants are found devoid of merits and are dismissed.

10. Since appeals are dismissed, civil applications are also dismissed.

(M.S.Shah,J.)

(Akil Kureshi,J.)

(raghu)